

§ 1304.212

with the standards in effect at the time the previous permit was first issued, and they may continue mowing established lawns that existed prior to November 1, 1999.

(d) New owners wishing to continue existing grandfathered activities and structures must:

(1) Maintain existing permitted docks, piers, boathouses, and other shoreline structures in good repair.

(2) Obtain TVA approval for any repairs that would alter the size of the facility, for any new construction, or for removal of trees or other vegetation (except for mowing of lawns established prior to November 1, 1999).

§ 1304.212 Waivers.

(a) Waivers of standards contained in this subpart may be requested when the following minimum criteria are established:

(1) The property is within a pre-existing development (an area where shoreline development existed prior to November 1, 1999); and

(2) The proposed shoreline alterations are compatible with surrounding permitted structures and uses within the subdivision or, if there is no subdivision, within the immediate vicinity (one-fourth mile radius).

(b) In approving waivers of the standards of this subpart C, TVA will consider the following:

(1) The prevailing permitted practices within the subdivision or immediate vicinity; and

(2) The uses permitted under the guidelines followed by TVA before November 1, 1999.

Subpart D—Activities on TVA Flowage Easement Shoreland

§ 1304.300 Scope and intent.

Any structure built upon land subject to a flowage easement held by TVA shall be deemed an obstruction affecting navigation, flood control, or public lands or reservations within the meaning of section 26a of the Act. Such obstructions shall be subject to all requirements of this part except those contained in subpart C of this part, which shall apply as follows:

(a) All of § 1304.212 shall apply.

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(b) Sections 1304.200, 1304.203, 1304.207, and 1304.209 shall not apply.

(c) Section 1304.201 shall not apply except for paragraph (c).

(d) Section 1304.202 shall apply except that TVA shall determine on a case-by-case basis whether it is necessary to remove materials accumulated behind sediment control structures to an upland site.

(e) Section 1304.204 shall apply except that the “50 feet” trigger of paragraph (i) of that section shall not apply. TVA may impose appropriate requirements to ensure accommodation of neighboring landowners.

(f) Section 1304.205 shall apply except that the facilities described in paragraph (a) are not limited to locations within an access corridor.

(g) Section 1304.206 shall apply except for paragraph (b)(3).

(h) Section 1304.208 shall apply except that TVA approval shall not be required to conduct the activities described in paragraph (a).

(i) Section 1304.210 shall apply except for paragraph (d).

(j) Section 1304.211 shall apply except to the extent that it would restrict mowing or other vegetation management.

(k) Nothing contained in this part shall be construed to be in derogation of the rights of the United States or of TVA under any flowage easement held by the United States or TVA.

§ 1304.301 Utilities.

Upon application to and approval by TVA, utility lines (electric, water-intake lines, etc.) may be placed within the flowage easement area as follows:

(a) Power lines, poles, electrical panels, and wiring shall be installed:

(1) In a way that would not be hazardous to the public or interfere with TVA operations; and

(2) In compliance with all State and local electrical codes (satisfactory evidence of compliance to be provided to TVA upon request).

(b) Electrical service shall be installed with an electrical disconnect that is located above the 500-year floodplain or the flood risk profile, whichever is higher, and is accessible during flood events.

(c) TVA's issuance of a permit does not mean that TVA has determined the facilities are safe for any purpose or that TVA has any duty to make such a determination.

§ 1304.302 Vegetation management on flowage easement shoreland.

Removal, modification, or establishment of vegetation on privately-owned shoreland subject to a TVA flowage easement does not require approval by TVA. When reviewing proposals for docks or other obstructions on flowage easement shoreland, TVA shall consider the potential for impacts to sensitive plants or other resources and may establish conditions in its approval of a proposal to avoid or minimize such impacts consistent with applicable laws and executive orders.

§ 1304.303 Channel excavation.

(a) Channel excavation of privately-owned reservoir bottom subject to a TVA flowage easement does not require approval by TVA under section 26a if:

(1) All dredged material is placed above the limits of the 100-year floodplain or the TVA flood risk profile elevation, whichever is applicable, and

(2) The dredging is not being accomplished in conjunction with the construction of a structure requiring a section 26a permit.

(b) Any fill material placed within the flood control zone of a TVA reservoir requires TVA review and approval.

(c) TVA shall encourage owners of flowage easement property to adopt the standards for channel excavation applicable to TVA-owned residential access shoreland.

Subpart E—Miscellaneous

§ 1304.400 Flotation devices and material, all floating structures.

(a) All flotation for docks, boat mooring buoys, and other water-use structures and facilities, shall be of materials commercially manufactured for marine use. Flotation materials shall be fabricated so as not to become water-logged, crack, peel, fragment, or be subject to loss of beads. Flotation materials shall be resistant to puncture, penetration, damage by animals,

and fire. Any flotation within 40 feet of a line carrying fuel shall be 100 percent impervious to water and fuel. Styrofoam flotation must be fully encased. Reuse of plastic, metal, or other previously used drums or containers for encasement or flotation purpose is prohibited, except as provided in paragraph (c) of this section for certain metal drums already in use. Existing flotation (secured in place prior to September 8, 2003) in compliance with previous rules is authorized until in TVA's judgment the flotation is no longer serviceable, at which time it shall be replaced with approved flotation upon notification from TVA. For any float installed after September 8, 2003, repair or replacement is required when it no longer performs its designated function or exhibits any of the conditions prohibited by this subpart.

(b) Because of the possible release of toxic or polluting substances, and the hazard to navigation from metal drums that become partially filled with water and escape from docks, boathouses, houseboats, floats, and other water-use structures and facilities for which they are used for flotation, the use of metal drums in any form, except as authorized in paragraph (c) of this section, for flotation of any facilities is prohibited.

(c) Only metal drums which have been filled with plastic foam or other solid flotation materials and welded, strapped, or otherwise firmly secured in place prior to July 1, 1972, on existing facilities are permitted. Replacement of any metal drum flotation permitted to be used by this paragraph must be with a commercially manufactured flotation device or material specifically designed for marine applications (for example, pontoons, boat hulls, or other buoyancy devices made of steel, aluminum, fiberglass, or plastic foam, as provided for in paragraph (a) of this section).

(d) Every flotation device employed in the Tennessee River system must be firmly and securely affixed to the structure it supports with materials capable of withstanding prolonged exposure to wave wash and weather conditions.